

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

This document relates to:

*The County of Summit, Ohio, et al. v. Purdue  
Pharma L.P., et al.*  
Case No. 18-op-45090

*The County of Cuyahoga, et al. v. Purdue  
Pharma L.P., et al.*  
Case No. 17-op-45004

MDL No. 2804

Hon. Dan Aaron Polster

**DEFENDANTS' MOTION TO EXCLUDE EXPERT TESTIMONY OF  
KATHERINE KEYES, ANNA LEMBKE & JONATHAN GRUBER  
RE THE "GATEWAY HYPOTHESIS" OF CAUSATION**

Certain Defendants<sup>1</sup> hereby move for an order granting Defendants' motion to exclude the opinions and testimony of Katherine Keyes, Anna Lembke, and Jonathan Gruber concerning the

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<sup>1</sup> In this notice and the accompanying motion and brief, "Defendants" include Purdue Pharma, L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc. f/k/a Par Pharmaceutical Holdings, Inc.; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Johnson & Johnson; Teva Pharmaceutical Industries, Ltd.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Allergan plc f/k/a Actavis plc; Allergan Finance, LLC, f/k/a/ Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; Watson Laboratories, Inc.; Warner Chilcott Company, LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc., f/k/a Watson Laboratories, Inc. - Salt Lake City; Actavis Laboratories FL, Inc., f/k/a Watson Laboratories, Inc. - Florida; Insys Therapeutics, Inc.; Mallinckrodt plc; Mallinckrodt LLC; SpecGx LLC; AmerisourceBergen Drug Corporation; Andia, Inc.; Cardinal Health, Inc.; CVS Indiana, LLC; CVS Rx Services, Inc.; Discount Drug Mart, Inc.; HBC Service Company; Henry Schein, Inc.; Henry Schein Medical Systems, Inc.; McKesson Corporation; Miami-Luken, Inc.; Prescription Supply, Inc.; H. D. Smith Holding Company; H. D. Smith Holdings, LLC; H. D. Smith, LLC d/b/a HD Smith, f/k/a H.D. Smith Wholesale Drug Co.; Health Mart Systems, Inc.; Rite

“gateway hypothesis” of causation in their entirety under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny. As described more fully in the accompanying memorandum, these experts’ opinions on the “gateway hypothesis” are unreliable and misleading. Accordingly, the opinions and testimony of Katherine Keyes, Anna Lembke, and Jonathan Gruber concerning the “gateway” hypothesis of causation should be excluded in their entirety.

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Aid of Maryland, Inc. Rite Aid Of Maryland, Inc.; d/b/a Rite-Aid Mid-Atlantic Customer Support Center, Inc.; Walgreen Co.; Walgreen Eastern Co.; and Walmart Inc. f/k/a Wal-Mart Stores, Inc.

Teva Pharmaceutical Industries Ltd., Allergan plc, and Mallinckrodt plc are respectively an Israeli corporation, Irish holding company, and Irish company that are not subject to and contest personal jurisdiction for the reasons explained in their pending motions to dismiss for lack of personal jurisdiction; they are specially appearing to join this motion as a result of the Court’s deadline to file dispositive and *Daubert* motions, and, thus, they do not waive and expressly preserve their pending personal jurisdiction challenges.

On June 10, 2019, Insys Therapeutics, Inc. and its affiliates each filed a voluntary case under chapter 11 of United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which cases are being jointly administered under Case No. 19-11292 (KG). In light of this bankruptcy proceeding, Insys does not join any of the *Daubert* motions for summary judgment motions to be filed in the MDL Track One cases.

Dated: June 28, 2019

Respectfully submitted,

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<sup>2</sup> Teva Pharmaceutical Industries Ltd., Allergan plc, and Mallinckrodt plc are respectively an Israeli corporation, Irish holding company, and Irish company that are not subject to and contest personal jurisdiction for the reasons explained in their pending motions to dismiss for lack of personal jurisdiction; they are specially appearing to join this motion as a result of the Court's deadline to file dispositive and Daubert motions, and, thus, they do not waive and expressly preserve their pending personal jurisdiction challenges.

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**CERTIFICATE OF SERVICE**

I, Ashley W. Hardin, hereby certify that the foregoing document was served on all counsel of record via the Court's ECF system.

/s/ Ashley W. Hardin  
Ashley W. Hardin